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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

Amendment to the Commission's Rules )  
Regarding a Plan for Sharing )  
the Costs of Microwave Relocation )

WT Docket No. 95-157  
RM-8643

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**REPLY COMMENTS OF UTAM, INC.**

January 11, 1996

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**REPLY COMMENTS OF UTAM, INC.**

UTAM, Inc. hereby submits its reply to the comments filed in response to the Commission's Notice of Proposed Rulemaking concerning microwave relocation cost sharing and the transition of the 2 GHz band from microwave operations to Personal Communications Services ("PCS").<sup>1</sup> Those comments demonstrate overwhelming support for adoption of the Commission's proposals. Accordingly, UTAM urges the FCC to continue to expedite its consideration of these critical issues and to implement both a cost sharing plan and necessary adjustments to the microwave relocation rules. Equally importantly, and as set out in detail below, the cost sharing rules should incorporate specific provisions addressing the unique circumstances facing UTAM in clearing the unlicensed band and ensure that UTAM will receive the flexibility it requires with regard to incurring and paying its reimbursement obligations so that it can continue to discharge its significant public interest responsibilities.

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<sup>1</sup> Notice of Proposed Rulemaking, WT Docket No. 95-157 (Oct. 12, 1995)(hereinafter "Notice"). All comments cited herein refer to those filed on November 30, 1995 in response to the Notice unless otherwise specified. Reply comments in this proceeding were due December 21, 1995. Because the Commission was closed on that date, this reply is being submitted on the first day the Commission is open following the budgetary shutdown.

## **I. INTRODUCTION AND SUMMARY**

As the frequency coordinator for the unlicensed PCS spectrum, UTAM has played an active role in the current proceeding to develop recommendations that will enable it to fulfill its obligations and facilitate the rapid deployment of PCS products. UTAM and numerous other commenters strongly support the FCC's proposals for a cost sharing plan and modifications to the relocation rules. But, most importantly, UTAM submits that the cost sharing rules ultimately adopted must take into account the unique challenges facing both unlicensed PCS providers and UTAM.

UTAM is in a singular position as the non-profit frequency coordinator for unlicensed PCS. UTAM is completely dependent upon voluntary kick start funds and fees from the sale of unlicensed PCS devices for meeting its financial obligations. Consequently, the FCC must structure its cost sharing rules in a manner that allows UTAM to control when it incurs a reimbursement obligation for relocation costs. To this end, UTAM recommends a trigger mechanism that conforms to the FCC's proposal but is tailored to the specific coordination procedures to be used by unlicensed PCS.

Under UTAM's proposal, it will become liable for compensating a party for a microwave relocation only when: (1) a county is cleared of microwave links in the unlicensed allocation and UTAM raises a Zone 1 power cap as a result of third-party relocation activities or (2) a county is cleared of microwave links in the unlicensed

allocation and UTAM reclassifies a Zone 2 county to Zone 1 status, which could not have occurred without third-party relocation activities. This trigger approach allows UTAM to control if and when it will be subject to a reimbursement requirement.

To further ensure that UTAM is able to meet its cost sharing obligations, the FCC should give UTAM the discretion to select between one of two payment options: (1) use of the FCC's proposed deferred payment scheme or (2) dedication of the clearing fees raised from the additional unlicensed PCS deployment enabled by a third-party's relocation activities. UTAM should be permitted to elect one option for each relocation affecting the unlicensed band. UTAM cannot endorse any cost sharing proposal that could give rise to payment obligations without assuring the availability of sufficient funds to meet them.

UTAM welcomes many of the proposed modifications to the transition rules that seek to expedite the relocation process and to ameliorate the continuing abuses by microwave incumbents. UTAM particularly supports the FCC's proposed cap on reimbursable costs as well as the proposed definitions of good faith bargaining and comparable facilities. Nonetheless, UTAM urges the FCC to consider seriously PCIA's and other licensees' recommendations to either remove the voluntary negotiation period or to extend the good faith negotiation requirement to the voluntary period to further curb abuses by microwave incumbents.

Finally, UTAM strongly encourages the FCC to terminate all licensing in the 2 GHz band, including secondary licensing. Secondary licensees will inevitably suffer

interference from and cause interference to continually expanding PCS operations. To avoid wasting money on the construction of facilities that will ultimately have to be shut down, the FCC should direct future microwave activity to the other bands designated for such uses.

## **II. THE RECORD REFLECTS BROAD SUPPORT FOR ESTABLISHMENT OF A COST SHARING MECHANISM**

The great majority of the forty-five comments filed in this proceeding support the implementation of a plan to allocate equitably the costs of relocating microwave incumbents from the 2 GHz band.<sup>2</sup> Indeed, commenting parties from all aspects of the PCS and microwave industries -- existing A and B Block licensees, potential Entrepreneur Block licensees, microwave incumbents, and unlicensed PCS manufacturers -- urge the establishment of cost sharing requirements.

Without exception, the A and B block PCS licensees commenting in this proceeding support cost sharing.<sup>3</sup> While some variations on the details set out in the Notice were suggested by different parties, those PCS providers who are already relocating microwave links, and are thus most knowledgeable regarding the

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<sup>2</sup> Only Infocore Wireless, Inc., Iowa L.P., and Minnesota Equal Access Network Services, Inc. oppose cost sharing.

<sup>3</sup> See, e.g., Comments of AT&T Wireless Services, Inc. at 4 ("AT&T"); Comments of BellSouth Corporation at 1-2 ("BellSouth"); Comments of GTE Service Corporation at 2 ("GTE"); Comments of Omnipoint Communications, Inc. at 1-3 ("Omnipoint").

shortcomings of the current rules, overwhelmingly support the FCC's proposals and believe that such a cost sharing plan will assist the relocation process. Those filings demonstrate that, in most respects, the FCC's proposed plan reasonably accommodates all of the cost sharing-related factors affecting present and future PCS licensees.

However, as UTAM explained in its comments, a PCS provider should be entitled to 100% reimbursement for relocating any link outside its frequency block or service area even if the relocater would have suffered adjacent channel interference from the link. Because this clear, easy-to-apply rule will simplify the cost sharing process and remove the potential for dispute over the reasons an out-of-band or out-of-area link was relocated, a number of parties support it.<sup>4</sup> Although a few commenters suggest that all types of interference be treated in the same fashion on the ground that incumbents must be protected from all interference,<sup>5</sup> those parties fail to recognize that, regardless of the cost sharing rules, PCS providers are required to avoid causing interference to incumbents operating in the 2 GHz band.

The majority of potential Entrepreneur Block licensees who commented likewise generally endorse the cost sharing process as facilitating the clearing of the spectrum

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<sup>4</sup> See BellSouth at 16-18; Omnipoint Corporation at 4; Comments of Pacific Bell Mobile Services at 5 ("PacBell"); Comments of the Personal Communications Industry Association at 30-32 ("PCIA"); Comments of U.S. Airwaves Inc. at 3-6 ("Airwaves").

<sup>5</sup> See, e.g., Comments of Alcatel Network Systems at 2; Comments of American Petroleum Institute at 6.

and thus the deployment of PCS.<sup>6</sup> Cost sharing will, in fact, make it easier for such entities to deploy their systems and products because it will encourage the rapid relocation of incumbents from the band. Thus, when additional PCS licensees enter the market, much of the spectrum already will have been cleared, and they will be able to deploy their systems immediately. UTAM will similarly benefit from this faster clearing of the band, as it can allow the deployment of unlicensed products as soon as sufficient revenue has been collected to meet its respective cost sharing obligations.

Significantly, microwave incumbents, including UTC, the American Association of Railroads, the Southern Company, and a number of smaller operators, also agree that cost sharing will speed relocation negotiations and facilitate the relocation of entire networks rather than individual links.<sup>7</sup> The relocation of networks has consistently been of great importance to the microwave industry, and the FCC's cost sharing plan will allow a PCS provider to relocate several links both inside and outside of its service area and/or spectrum and receive reimbursement from benefitting PCS providers as they enter the market. UTAM has pledged to work with incumbents to try and accommodate their needs regarding the relocation of their networks, and the cost sharing plan will facilitate such efforts.

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<sup>6</sup> See Comments of Carolina PCS I Limited Partnership at 2; Comments of DCR Communications, Inc. at 2; Comments of GO Communications Corporation at 1-2 ("GO"); Omnipoint at 1-3; Airwaves at 1.

<sup>7</sup> See, e.g., Comments of UTC at 5-6; Comments of Association of American Railroads at ii, 15; Comments of The Southern Company at 3; Comments of East River Electric Power Cooperative at 1-2; Comments of Maine Microwave Associates at 2.



The only major concern expressed by microwave incumbents is that the cap on reimbursable costs proposed by the FCC might act to limit the costs that PCS providers would be willing to pay to incumbents for relocating their systems.<sup>8</sup> UTAM is convinced that a cap on reimbursable costs is necessary to ensure that PCS relocators control their expenditures in a responsible manner and that PCS providers entering the market later can predict their cost sharing obligations. The FCC's proposed cap of \$250,000, plus \$150,000 for any new towers necessary, will cover the costs of the majority of relocations, but it in no way undermines the requirement under the FCC's rules that a PCS relocater pay all of the costs of a comparable system for an incumbent even if they exceed the reimbursement cap. Thus, the FCC should adopt its proposed cap on shared costs since the cap will facilitate the cost sharing plan without in any way affecting the comparable system requirement.

Finally, as set out in its opening comments, UTAM strongly supports the establishment of a mechanism to govern the sharing of microwave relocation costs. Accordingly, based on the consistent recommendations of all of the parties potentially affected by a cost sharing plan -- A and B block licensees and C block applicants as well as microwave incumbents and UTAM -- the FCC should expeditiously adopt a cost sharing plan to speed the clearing of the 2 GHz band and the deployment of PCS.

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<sup>8</sup> See, e.g., Comments of American Gas Association at 4; Comments of Association of Public-Safety Communications Officials-International, Inc. at 13.

### **III. THE FCC's COST SHARING RULES MUST ACCOMMODATE THE UNIQUE REQUIREMENTS OF UTAM**

In considering and adopting a cost sharing plan, the FCC's rules should recognize the unique status of UTAM as the frequency coordinator for unlicensed PCS. That role, and the differences between licensed and unlicensed PCS in general, impose certain limitations and responsibilities on UTAM that will affect its ability both to benefit from microwave relocations undertaken by other parties and to fund its reimbursement obligations for such relocations. As a result, any cost sharing plan ultimately adopted must incorporate specific provisions to govern the incurring of reimbursement liabilities and their payment terms that are consistent with UTAM's FCC-approved plan for financing and managing the clearing of the unlicensed band.

#### **A. UTAM's Revenues Are Completely Dependent on the Sales of Unlicensed PCS Products**

As the FCC-designated frequency coordinator for unlicensed PCS, UTAM is a non-profit entity that will raise funds to clear the unlicensed spectrum through a clearing fee on each unlicensed PCS product deployed. Thus, the revenues with which it will relocate links and pay cost sharing obligations are dictated by the timing and success of its members' equipment sales. Although UTAM anticipates that demand for unlicensed products will be high and sales will be brisk, it cannot commit to any financial liabilities until it has the necessary funds in hand.

Pacific Bell Mobile Services suggests in its comments that, because some large companies are members of UTAM, it has the ability to obtain financing to meet its cost sharing obligations.<sup>9</sup> This is not the case. The financial resources of UTAM's members cannot be equated to the financial resources of UTAM. UTAM is a non-profit frequency coordinator that is dependent upon voluntary kick start funds and clearing fees for meeting its financial obligations. As described in the UTAM Plan, UTAM has performed detailed calculations to determine the length of time necessary to clear the unlicensed band. Based on the information available when the Plan was filed, UTAM determined that it would take between six and twelve years to relocate all links in the unlicensed band. If UTAM had large and predictable funding to rely upon, there would be no need for this uncertainty, and UTAM would simply clear the band. However, as a result of having to rely on clearing fees for its revenue, UTAM must protect itself from any obligations it may not be able to meet.

**B. Deferred Payment Options Are Reasonable and Critically Important to UTAM's Support for Cost Sharing**

In its comments, UTAM proposed that it be permitted to choose between one of two payment options for each cost sharing obligation.<sup>10</sup> First, UTAM could elect to pay an obligation on the terms the FCC has proposed, with payments consisting of interest only for the first six years and principal and interest amortized over the next

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<sup>9</sup> PacBell at 5-6.

<sup>10</sup> Comments of UTAM at 8-9.

four years. However, if upon incurring a cost sharing obligation UTAM does not believe it has sufficient funds to meet this schedule, it should have the option of choosing to dedicate the clearing fees raised from the additional product deployment enabled by the third party's relocation activities to pay its cost sharing obligation. Such a deferred payment mechanism most closely aligns the benefits unlicensed PCS manufacturers receive from the ability to deploy additional products with the payment of their cost sharing obligations.

In sum, UTAM cannot support a cost sharing plan that could potentially burden it with obligations it will not have the funds to meet. Accordingly, UTAM urges the FCC to give UTAM the option of utilizing the deferred payment mechanism the FCC proposed or dedicating clearing fees to meet cost sharing obligations.

**C. UTAM's Proposed Trigger for Its Cost Sharing Obligations Is Reasonably Related to When Unlicensed PCS Realizes Meaningful Benefits From Prior Microwave Relocations**

UTAM supports the FCC's proposal that a PCS provider should incur a cost sharing obligation when it benefits from a prior microwave relocation by another PCS provider. However, because the FCC's cost sharing plan is based on the needs of licensed PCS, UTAM has proposed a trigger mechanism which takes into account the coordination mechanisms necessary for unlicensed PCS. UTAM recommends that unlicensed PCS incur cost sharing obligations when:

- a county is cleared of microwave links in the unlicensed allocation and UTAM raises a Zone 1 power cap as a result of third party relocation activities, or

- a county is cleared of microwave links in the unlicensed allocation and UTAM reclassifies a Zone 2 county to Zone 1 status, which could not have been done without third party relocation activities.

This trigger mechanism is based on the methods UTAM is using to coordinate the deployment of unlicensed PCS products and systems prior to the complete clearing of the band. Using this standard, UTAM would only incur a cost sharing obligation when unlicensed PCS manufacturers are able to make additional deployments because of the prior relocation of a microwave link by another PCS provider. Tying unlicensed PCS manufacturers' increased deployment opportunities to their cost sharing obligations is analogous to the FCC's proposal that a licensed PCS provider incur a cost sharing obligation when it deploys its system in such a way that it would have caused interference to a link but for the link's prior relocation. This mechanism would also give UTAM the necessary control over when it incurs cost sharing obligations by allowing it to limit deployment in areas until it has sufficient funds to begin making reimbursement payments, just as UTAM will do in connection with its own relocation activities.

#### **IV. COMMENTS ON THE NOTICE DOCUMENT THE OVERWHELMING NEED FOR REFINEMENTS TO THE FCC'S MICROWAVE RELOCATION RULES**

UTAM is concerned by the significant problems PCS licensees are experiencing as they begin their relocation efforts. In the comments, numerous licensees state that they are encountering microwave incumbents seeking excessive premiums over actual

relocation costs.<sup>11</sup> These abuses affect UTAM in two ways. Initially, UTAM fears that unreasonable incumbent demands will slow PCS licensees' relocation efforts. Because all duplex links in the unlicensed band are paired with receivers in the licensed PCS spectrum, any impediment to relocation in the latter frequencies will affect the speed at which the unlicensed band is cleared.

Moreover, as UTAM begins its own relocation efforts, it is concerned that it likewise will face unreasonable incumbent demands for premiums above actual relocation costs. UTAM has not budgeted for, and cannot afford to pay, premiums above actual relocation costs to incumbents.

**A. The Rule Changes Proposed by the FCC and PCS Providers  
Should Help Curb Ongoing Abuses of the Transition Rules**

In its Notice, the FCC suggested several modifications to the transition rules which will both facilitate the relocation process and discourage the abuses that now threaten to delay the deployment of PCS. First, defining good faith negotiations as the offer and acceptance of comparable facilities should expedite negotiations by giving the parties a verifiable basis upon which to reach an agreement. Second, defining comparable facilities in terms of technical factors and clarifying that analog facilities need not be replaced with digital if an acceptable analog solution exists establishes objective parameters for application of the FCC standard and will further assist the

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<sup>11</sup> Several parties detail the difficulties they have encountered during the negotiation process. See PCIA at 2-7; Comments of PCS PrimeCo, L.P. at 6 ("PCS PrimeCo"); Comments of Sprint Telecommunications Venture at 11-13 ("Sprint").

negotiation process. Third, if an incumbent is found not to be bargaining in good faith for a comparable system during the mandatory negotiation period, its system should be reclassified to secondary status six months after the determination. Finally, UTAM supports the FCC's proposal that parties unable to reach a compensation agreement six months into the mandatory negotiation period should be required to obtain at least one independent cost estimate. All of these measures will encourage parties to conclude agreements more readily.

UTAM also urges the FCC to consider PCIA's and other licensees' suggestions to either revise the voluntary negotiation period or to extend the good faith negotiation requirement to the voluntary period.<sup>12</sup> The purpose of the transition rules is to protect incumbents' communications by assuring them a comparable system. Giving parties the opportunity not to bargain in good faith only encourages incumbents to take advantage of the situation. Based on the problems identified by PCS licensees, UTAM believes that the continued use of a voluntary negotiation period without a good faith bargaining requirement may impede the relocation process, which will in turn delay the deployment of both licensed and unlicensed PCS.

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<sup>12</sup> AT&T at 15-16; GO at 7-9; Comments of Intercel, Inc. at 4-5; Comments of PacBell at 8-9; PCS Primeco at 16-17; PCIA at 11-15; Comments of SouthWestern Bell Mobile Systems, Inc. at 2-3; Sprint at 10; Comments of Western Wireless Corporation at 11-13.

**B. No Further Licensing of Incumbent Links  
Should Occur in the PCS Spectrum**

The record strongly supports termination of all licensing of microwave systems, including secondary licensing, in the 2 GHz band.<sup>13</sup> The Commission has proposed only to narrow the class of additional licensing modifications granted primary status to those which are supported by a special showing of need and for which the incumbent is able to establish that the modification would not add to the relocation costs of the PCS licensees. Although rejecting primary status modifications that increase relocation costs for PCS licensees is crucial to the ultimate clearing of the licensed band, it is not sufficient to avoid further burdening those parties responsible for the clearing process.

Allowing continued secondary licensing in the PCS bands will cause unnecessary problems. New secondary links will undoubtedly suffer interference from and cause interference to rapidly expanding PCS products and systems. Incumbents with such systems will be forced to move recently installed links and will be left with unusable equipment. Instead of issuing such stillborn authorizations, the FCC should direct new microwave activities to the 4, 6, and 11 GHz spectrum allocated for such uses.

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<sup>13</sup> See, e.g., GTE at 19; PacBell at 12; Comments of the Telecommunications Industry Association at 8 (supporting FCC's proposals regarding continued primary licensing). See AT&T at 13; PCS Primeco at 19; PCIA at 22 (opposing continued primary or secondary licensing).



## V. CONCLUSION

UTAM commends the Commission for its prompt consideration of these issues and submits that the cost sharing proposals should be adopted with the cost trigger and deferred payment mechanisms described above to accommodate the unique nature of unlicensed PCS. In addition, the FCC should adopt its proposed modifications to the transition rules, reconsider the benefits of a voluntary negotiation period, and direct all additional microwave licensing to other frequency bands. Such adjustments are vitally important to the successful implementation of PCS in the public interest.

Respectfully submitted,

UTAM, INC.

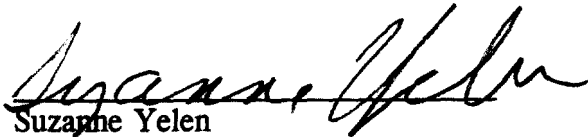
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January 11, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of January 1996, I caused a copy of the foregoing "**Reply Comments of UTAM, Inc.**" to be sent via hand delivery to the following:

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